SUPREME COURT U.S.
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No.03-1257

In The

Supreme Court of the United States

Mark Boivin, – Petitioner

v.

Town of Addison – Respondent

ON PETITION FOR A WRIT OF CERTIORARI
To the Supreme Court of the State of Vermont

BRIEF IN SUPPORT OF

PETITION FOR WRIT OF CERTIORARI

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LIST OF PARTIES

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Provisions:

The Fifth Amendment to the United States Constitution provides in relevant part: "[N]or shall private property be taken for public use, without just compensation."

The Fourteenth Amendment to the United States Constitution provides in relevant part: "[N]or shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

The Constitution of the State of Vermont

Chapter I., A Declaration of the Rights of the Inhabitants of the State of Vermont.

Article 2. [Private property subject to public use; owner to be paid]

That private property ought to be subservient to public uses when necessity requires it, nevertheless, whenever any person's property is taken for the use of the public, the owner ought to receive an equivalent in money.

Article 4. [Remedy at law secured to all]

Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which one may receive in person, property or character; every person ought to obtain right and justice, freely, and without being obliged to purchase it; completely and without any denial; promptly and without delay; comformably to the laws.

Article 9. [Citizens' rights and duties in the state; bearing arms; taxation]

That every member of society hath a right to be protected in the enjoyment of life, liberty, and property, and therefore is bound to contribute the member's proportion towards the expence of that protection, and yield personal service, when necessary, or an equivalent thereto, but no part of any person's property can be justly taken, or applied to public uses, without the person's own consent, or that of the Representative Body, nor can any person who is conscientiously scrupulous of bearing arms, be justly compelled thereto, if such person will pay such equivalent; nor are the people bound by any law but such as they have in like manner assented to, for their common good: and previous to any law being made to raise a tax, the purpose for which it is to be raised ought to appear evident to the Legislature to be of more service to community than the money would be if not collected.

Statutory Provisions:

32 V.S.A. § 3802 (2003). Property tax

The following property shall be exempt from taxation:

(8) Household furniture and equipment of every person not regularly used as income producing property; household provisions; personal wearing apparel and ornament; private and professional libraries; shrubs and plants located in a commercial greenhouse or nursery; fowl; sheep; cattle; horses; goats; swine; bees; hay and produce sufficient to winter out the stock; tractors and other machinery of a farmer, not used for hire or contract purposes; real and personal farm property constructed and used for the storage of manure and designed to avoid water pollution; tools and implements of a mechanic or farmer; aircraft, automobiles and motor vehicles, but not including trailer coaches; and motorized highway-building equipment and road-making appliances as defined in section 4(19) and (31) of Title 23 required to be registered as motor vehicles;

INTRODUCTION

The decision of the Supreme Court of the State of Vermont should not be allowed to stand, because if it is allowed to stand, it would place preconditions upon fundamental Constitutional rights.

The purpose of the Constitution is stated in the preamble:

> "We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and to secure the blessings of liberty to ourselves and to our posterity, do ordain and establish this Constitution for the United States of America."

Justice is established, and the blessings of liberty are secured by constitutional mandates of equal protection, compensation for property taken, and due process of law. These rights of the people are both a limit on the state to prevent the incursion and arbitrary application of the law and a mandatory obligation of the State to implement these protections. These rights are absolute and cannot be preconditioned.

The Vermont Supreme Court ignores the requirements of the Constitution. It places preconditions upon rights guaranteed by the Constitution while ignoring the necessities of uniformity and equity in taxation. It turns a blind eye to the issue of the State taking of private property through discriminatory taxation.

THE STANDARD OF LAW GOVERNING TAX APPEALS

The standard of law that applies to tax appeals in Vermont is:

> "... The appraiser or court shall take into account the requirements of law as to valuation, and the provisions of Chapter I, Article 9 of the Constitution of Vermont and the 14th Amendment to the Constitution of the United States...." 32 V.S.A. § 4467 (Emphasis added)

This legislation explicitly establishes the jurisdiction of the decisions of this Court over tax appraisals within the State of Vermont.

REASONS FOR GRANTING THE WRIT

First is the issue of the inclusion of personal property in the tax assessment. It is undisputed that items of personality are included in every sale presented to the trial court. It is also undisputed that the property tax applies only to the real estate. See 32 V.S.A. § 3802 (8) (2003) The Vermont Supreme Court states that no error occurred because, "Nothing in the statute requires the town, or its appraiser, to inspect each comparable property for items of personality..." This pre-conditions and evades the requirements of equal protection, uniformity and equity. All other properties in town are being assessed only upon the real estate. Inclusion of non-realty items in the subject assessments is a violation of the 14th Amendment.

In the words of the International Association of Assessing Officers (IAAO)

6.5 Adjustments to Sales Prices

Sales prices in ratio studies may need to be adjusted for financing, assumed leases, personal property, and date of sale. This is especially true for nonresidential properties. The real property tax is based on the market value of real property alone as of a specific date. This value may not be the same as investment value (that is, the monetary value of a property to a particular investor) and does not include the value of personal property or financing arrangements. Thus, failure to make required adjustments for these factors gives unsatisfactory estimates of market value for the real estate." Standards on Ratio Studies, Approved July 1999, International Association of Assessing Officers. (Emphasis added)

The extent of error in the estimation of the fair market value is best shown by simple facial comparison.

The fact is, if the Taxpayers could only have sold their properties for the appraised values ($408,000; $122,500; & $96,000), they could have bought three whole farms that were sold in Addison complete with dwellings and barns (Ramsey - 438 acres for $223,600; Blacklock - 278 acres for $175,000; Gevry – 124 acres for $145,000). This would have increased their land base from 467 acres in three separate parcels, to 840 acres in four parcels, and they still would have $82,900 left unspent.

Given the gross discrepancy between the assessments and the sales of neighboring properties raising the assessments of the subject parcels by the court is ludicrous.

When the Vermont Supreme Court points out that the val-

ues presented by the Petitioner for parcels two and three are lower than the values in 1990 and 1996, it errs on two points. First the "1996 value" is the Town's assessed value that is being appealed. Secondly the value presented by the Petitioner for parcel two is only 3% less than the 1987 purchase price and is well within the 90% confidence range of ± 4.7%. In addition the Town's own appraiser had testified that the values of land in Addison had declined between 1990 and 2000. Likewise the Vermont Supreme Court ignores the wide variance between the values presented by the Town's appraiser. See Petition for a Writ of Certiorari, pages 93, 94.

Secondly, the Vermont Supreme Court ruled that the exclusion of the Petitioner's ratio study from consideration did not affect his "substantial rights." This ruling ignores the fact that neighboring farms are being assessed at over 155% of the fair market while residences are being assessed at only 91% of value. The fact that the petitioner is being assessed for more than 100% of the fair market value of his property is a violation of his "substantial rights." This differential in assessments is an unequivocal violation of the equal protection clause.

Thirdly the Vermont Supreme Court ruling on the Discounted Cash Flow (DCF) analysis is a classic example of George Orwell's 1984 "New Speak." The Vermont Supreme Court entry order states that DCF is computed by the State of Vermont **to assess farms** under the Current Use Value (CUV) program. At the same time the Vermont Supreme Court states, "... the method is not generally used for farms." These statements are self-contradictory. They are a clear example of the twisting of logic and of the English language.

Likewise the Vermont Supreme Court's ruling that Mr. Boivin's calculations were not credible because he did not follow "accepted appraisal methods" while stating that the law does not require Mr. DeVries to adhere to The Uniform Standards of Professional Appraisal Practice (USPAP) is "New Speak" in its prime. It is a double standard and also a clear violation of the equal protection clause.

It must also be noted that while Mr. Boivin's calculations were not defined in USPAP, they did follow the Standard on Ratio Studies by the IAAO and the procedures adopted by the State of Vermont, Department of Taxes, Division of Property Valuation and Review (PVR) for its equalization studies.

On the other hand, Mr. DeVries committed numerous violations of USPAP including the use of circular reasoning, failing to adjust for personal property, even for the values he had assigned to the non-realty items during a contemporaneous appraisal of the comparable sale. He readily admitted in testimony that he had appraised the subject properties as a "going concern" and had selected his comparable sales o that basis. He also admitted that not been able to find any parcels that had sold for dollar amounts close to the values that he had assigned to the subject parcels, even though he had searched all over the whole county. Every one of Mr. DeVries' errors were ignored by both the trial court and by the Vermont Supreme Court.

The last issue is Sales Chasing.

> "Sales chasing is the practice of using the sale of a property to trigger a reappraisal of that property at of

> near the selling price. Sales Chasing causes invalid uniformity results in a sales ratio study and causes invalid appraisal level results unless similar unsold parcels are reappraised by a method that produces an appraisal level or unsold properties equal to the appraisal level of sold properties." Standards on Ratio Studies, Approved July 1999, International Association of Assessing Officers. (Emphasis added)

This Court has ruled that systematic reassessments of only properties that have sold is a violation of the 14th Amendment. See Allegheny Pittsburgh Coal v. Webster County, 488 U.S. 336 (1989)

Documentary evidence, in the form of Property Transfer Tax Returns, was provided the trial court that the Town is actively engaged in sales chasing and that only the properties that were selected for the State Equalization Study were reassessed after the sale. This is Enron accounting, cooking the books, fraud. For the court to accept and use this poisoned study is itself a violation of the law.

Nevertheless the courts turn a blind eye to the evidence. It claims that the issue was not preserved because there was no argument before the trial court. In other word, because the Town chose not to contest the uncontestable facts, the issue does not meet a precondition for consideration. This calls to mind the aphorism that, "There are none so blind as those who will not to see."

The only clear standard applied by the Vermont Supreme Court is that of credentials. While the courts systematically exclude the evidence of the Petitioner because he is "a dairy farmer and not an appraiser" it justifies its decision on the

fact that, "In this case, the court had a lengthy written appraisal supporting the values that it ultimately found, in addition to explanatory testimony from the expert who prepared the appraisal." This is a violation of the due process and equal protection provisions of the Constitution.

The Vermont Supreme Court finds that there is no problem with the fact that farms sell for the current use value and that they are assessed for more than the selling prices even thought this scheme forces farmers into the current use program with its subsequent lien on $1/5^{th}$ of the value of the property.

SUMMARY

Justice John Marshall stated that the power to tax is the power to destroy. From the evidence and the actions of the Town and the State PVR and the Vermont Supreme Court it is clear that there is a concerted attack upon private property. The State is trying to gain an interest and eventually control of the farmland in the state.

The Town is systematically over assessing the farmland within the town and engaging in unconstitutional sales chasing. The PVR knows about the over-assessments and ignores the sales chasing. The Vermont Supreme Court ignores the Constitutional requirements, applies arbitrary and unequal preconditions to the evidence, and feigns justifications to avoid the issue. Evidence of the property owner is systematically excluded, errors by the "expert" ignored and the court then rules that there is no evidence to support the taxpayer.

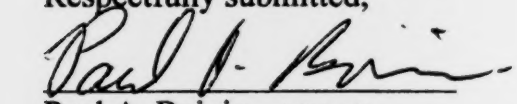
No taxpayer, whether farmer or homeowner, can be immune to such a systematic attempt to force him to forfeit his property

CONCLUSION

This Court should grant the PETITION FOR A WRIT OF CERTIORARI and directly address the issue of discriminatory tax assessment designed to compel a taxpayer to forfeit rights to his property and the willful blindness of the Supreme Court of the State of Vermont to the facts. This Court should re-establish the primacy of the Constitution and apply the protections so guaranteed.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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Date: 3/25/04